

**Remarks/Arguments:**

**STATUS OF THE CLAIMS**

Claims 6-11, 13, 14 and 16-19 are pending and currently under consideration.

Claims 6 and 16 have been amended to recite, in pertinent part, the board comprising a central longitudinal axis, a central lateral axis; wherein the concave region is positioned off center with respect to the lateral axis and centrally positioned with respect to the longitudinal axis, and where the concave region encompasses an area within ~~the plane~~ of the lower surface greater than an area defined by the circumference of the balancing insert.

Support for the amendment is found in Figures 1-9.

**REJECTIONS UNDER 35 U.S.C. § 112**

Claims 6-14 and 16-19 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner states that there is insufficient antecedent basis for the phrase "the plane" in claims 6 and 16. Applicants respectfully traverse. Claims 6 and 16 have been amended to remove the phrase "the plane," rendering this rejection moot. For at least this reason, Applicant respectfully requests that the present rejection be withdrawn.

**REJECTIONS UNDER 35 U.S.C. § 103(a)**

**Armer in view of McGuiness**

Claims 6, 7, 9 and 16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Armer Jr., U.S. Patent No. 4,191,371 ("Armer") in view of McGuiness, U.S. Patent No. 6,168,551 ("McGuiness"). The Examiner states that Armer discloses the balance training device, and inherently the method of training, as presently claimed with the exception that Armer does not disclose that the concave region is non-symmetrically located in the board. The Examiner states that McGuiness discloses a similar device having a board shaped as a surf board. Therein, the Examiner concludes that would have been obvious to change the shape of Armer's device to the inherently non-symmetrical surf board shape. Thus, the placement of the concave region would be located non-symmetrically in the board. Applicant respectfully traverses.

In an effort to more clearly define the present invention, Applicant has amended Claims 6 and 16 to replace the "non-symmetrical" description with more accurate terms. Claims 6 and 16, as amended, now recite wherein the concave region is positioned off center with respect to the lateral axis and centrally positioned with respect to the longitudinal axis. Both Armer and McGuiness disclose devices having a concave region centrally positioned with respect to both the longitudinal and lateral axes. To establish a prima facie obviousness rejection under 35 U.S.C. § 103, the reference(s) must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981 (CCPA 1974). Because the combination of Armer and McGuiness fail to disclose all of the claim limitations, they cannot render the present invention obvious. For at least this reason, Applicant respectfully requests that the present rejection be withdrawn.

#### **Armer in view of McGuiness and Sasser**

Claims 8, 10, 14 and 17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Armer in view of McGuiness and Sasser Jr., U.S. Patent No. 3,488,049 ("Sasser"). The Examiner states that Armer and McGuiness disclose the present invention as described in Claim 6. The Examiner states that Sasser discloses a similar device having an oval/oblong or rectangle shaped concave region. Therein, the Examiner concludes that it would have been obvious to modify the shape of the concave region in Armer/McGuiness into any shape including those disclosed in Sasser. Applicant respectfully traverses.

As stated above, the combination of Armer and McGuiness fail to disclose the claim limitation wherein the concave region is positioned off center with respect to the lateral axis and centrally positioned with respect to the longitudinal axis. The addition of Sasser does not cure this deficiency. Sasser discloses devices having a concave region centrally positioned with respect to both the longitudinal and lateral axes. Because the combination of Armer, McGuiness and Sasser fail to disclose all of the claim limitations, they cannot render the present invention obvious. For at least this reason, Applicant respectfully requests that the present rejection be withdrawn.

#### **Armer in view of McGuiness and England**

Claims 18 and 19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Armer in view of McGuiness and England, U.S. Patent No. 3,862,768. The Examiner states that Armer and McGuiness disclose the present invention as described in Claim 16. The Examiner states

that England discloses a similar device and exercise method wherein the method of exercise includes a plurality of boards each having different concave regions based on the user's skill level. Therein, the Examiner concludes that it would have been obvious to exercise with boards having sequentially larger concave regions to further develop the users. Applicant respectfully traverses.

As stated above, the combination of Armer and McGuiness fail to disclose the claim limitation wherein the concave region is positioned off center with respect to the lateral axis and centrally positioned with respect to the longitudinal axis. The addition of England does not cure this deficiency. England discloses devices having a concave region centrally positioned with respect to both the longitudinal and lateral axes. Because the combination of Armer, McGuiness and England fail to disclose all of the claim limitations, they cannot render the present invention obvious. For at least this reason, Applicant respectfully requests that the present rejection be withdrawn.

### CONCLUSION

The foregoing is believed to be fully responsive to the July 28, 2008 office action. The embodiments presented are believed to be allowable over the prior art of record. Consideration and allowance of the claims is respectfully requested.

In the event that any fee has been inadvertently overlooked and is required, the Commissioner is hereby authorized to charge any required fee or credit any overpayment to **Deposit Account No. 50-3570**.

If the Examiner believes that a telephone conference with Applicants' attorneys would be advantageous to the disposition of this case, the Examiner is cordially requested to telephone the undersigned.

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If the Examiner has any questions in connection with this paper, or otherwise if it would facilitate the examination of this application, please call the undersigned at the telephone number below.

Respectfully submitted,



Basil S. Krikelis  
Registration No. 41,129  
Patrick A. Walker III, Ph.D.  
Registration No. 58,734  
Attorney for Applicant

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**McCarter & English, LLP**  
Renaissance Centre  
405 N. King Street, 8<sup>th</sup> Floor  
Wilmington, DE 19801  
Phone: (302) 984-6393  
Fax: (302) 984-6399